

By Senator Kirkpatrick

5-475-99

1 A bill to be entitled
2 An act relating to postsecondary education;
3 providing definitions; creating the Florida
4 Affordable College Trust; providing duties of
5 the State Treasurer relating to the trust;
6 authorizing certain rules and procedures;
7 requiring certain responsibilities relating to
8 investments; requiring counsel; requiring a
9 financial report; providing for exemption from
10 taxation; prohibiting certain limitations to
11 and alterations of the trust; precluding
12 agreements with the trust from providing
13 guarantees relating to admissions and levels of
14 payment to certain institutions; requiring
15 compliance with certain laws and rules;
16 creating an advisory committee; providing for
17 appointment of members; authorizing a
18 direct-support organization; providing for a
19 board of directors; providing for transfer of
20 certain assets and renegotiation of contracts
21 under the Florida Prepaid College Program;
22 amending s. 222.22, F.S.; exempting property in
23 the Florida Affordable College Trust from
24 certain claims of creditors; amending s.
25 240.552, F.S.; transferring responsibilities
26 relating to the Florida Prepaid Tuition
27 Scholarship Program; amending s. 732.402, F.S.;
28 providing that contracts with the Florida
29 Affordable College Trust are exempt from
30 certain creditors with respect to deceased
31 persons; repealing s. 240.551, F.S., relating

1 to the Florida Prepaid College Program;
2 providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. As used in sections 1 through 10 of this
7 act, the term:

8 (1) "Depositor" means a person who makes a deposit,
9 payment, contribution, or gift to the trust as authorized in a
10 participation agreement.

11 (2) "Designated beneficiary" means:

12 (a) A resident of this state who was originally
13 designated in the participation agreement;

14 (b) A person who was subsequently designated and who
15 is a family member as defined in s. 2032A(e)(2) of the
16 Internal Revenue Code; or

17 (c) A person who receives a scholarship from interests
18 in the trust purchased by a state or local government or an
19 organization that is described in section 240.552, Florida
20 Statutes, provided that the organization also meets the
21 requirements of s. 501(c)(3) of the Internal Revenue Code.

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23 The term also applies to any other person enrolled in the
24 trust who is a qualified beneficiary under the definition in
25 s. 529 of the Internal Revenue Code.

26 (3) "Eligible educational institution" means a
27 postsecondary educational institution that qualifies under s.
28 529 of the Internal Revenue Code.

29 (4) "Treasurer" means the executive officer designated
30 as state treasurer by chapter 18, Florida Statutes.

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1 (5) "Internal Revenue Code" means the Internal Revenue
2 Code of 1986 or, if it is amended, any subsequent
3 corresponding internal revenue code of the United States.

4 (6) "Participation agreement" means an agreement
5 between the trust and depositors for participation in a
6 savings plan for a designated beneficiary.

7 (7) "Qualified postsecondary education expenses" means
8 fees, including tuition or matriculation fees, local fees, and
9 fees for residence and board in the amount typically required
10 for on-campus accommodation; books; supplies; and equipment
11 required for the enrollment or attendance of a designated
12 beneficiary at an eligible educational institution, including
13 undergraduate and graduate schools, and any other
14 postsecondary education expenses that may be permitted by s.
15 529 of the Internal Revenue Code.

16 (8) "Trust" means the Florida Affordable College
17 Trust.

18 Section 2. (1) The Florida Affordable College Trust
19 is established to promote and enhance the ability of the
20 residents of this state to obtain the benefits of higher
21 education. The trust is an instrumentality of the state and
22 shall perform the governmental functions required by this act.
23 The trust shall receive and hold all payments and deposits or
24 contributions intended for its use, as well as gifts,
25 bequests, and endowments or federal, state or local grants,
26 and any other public or private source of funds, and all
27 interest earned upon those funds, until funds are disbursed in
28 accordance with this act.

29 (2) The trust is not a governmental agency and the
30 amounts on deposit in the trust do not constitute property of
31 the state. Amounts on deposit in the trust may not be

1 commingled with state funds, and the state has no claim to or
2 against or interest in those funds. Any contract or other
3 obligation of the trust is not a debt or obligation of the
4 state, and the state has no obligation to any designated
5 beneficiary or any other person on account of the trust. All
6 amounts obligated to be paid from the trust are limited to
7 amounts available for the obligation on deposit in the trust.
8 The amounts on deposit in the trust may be disbursed only in
9 accordance with the provisions of sections 1 through 10 of
10 this act. The trust shall continue in existence as long as it
11 holds any deposits or has any obligations and until its
12 existence is terminated by law, and, upon termination of the
13 trust, any unclaimed assets of the trust must return to the
14 state.

15 (c) The treasurer shall receive, maintain, administer,
16 invest, and disburse the trust funds. The trust may receive
17 deposits by cash or check only. A depositor or designated
18 beneficiary may not direct the investment of any contributions
19 or amounts held in the trust except by choosing one of the
20 specific fund options provided by the trust.

21 Section 3. On behalf of the trust and for purposes of
22 the trust, the treasurer may:

23 (1) Receive and invest moneys in the trust in any
24 instruments, obligations, securities, or property, in
25 accordance with section 4 of this act.

26 (2) Establish consistent terms for each participation
27 agreement, bulk deposit, coupon or installment payments,
28 including:

29 (a) The method of payment into the trust by payroll
30 deduction or transfer from bank accounts.

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1 (b) The termination, withdrawal, or transfer of
2 payments under the trust, including transfers to or from a
3 qualified tuition program established by another state under
4 s. 529 of the Internal Revenue Code.

5 (c) Penalties for distributions not used or made in
6 accordance with s. 529(b)(3) of the Internal Revenue Code.

7 (d) The conditions under which one designated
8 beneficiary may be substituted for another in a participation
9 agreement.

10 (e) Any charges or fees in connection with the
11 administration of the trust.

12 (3) Enter into contractual agreements and pay for
13 contracted services from the gains and earnings of the trust.
14 Services that may be conducted through these contractual
15 agreements include, but are not limited to: legal
16 representation, actuarial consulting, accounting, maintenance
17 and custodial services, advice and counsel, management,
18 administration, advertising, marketing, and consulting.

19 (4) Procure insurance in connection with property,
20 assets, or activities of the trust, deposits into the trust,
21 or contributions to the trust.

22 (5) Apply for, accept, and expend gifts, grants, or
23 donations from public or private sources to enable the trust
24 to carry out its objectives.

25 (6) Adopt rules for the conduct of trust activities.

26 (7) Sue and be sued.

27 (8) Establish one or more funds within the trust and
28 maintain separate accounts for each designated beneficiary.

29 (9) Take any other action that is necessary to carry
30 out the purposes of the trust and incidental to the duties
31 imposed on the treasurer by sections 1 through 10 of this act.

1 Section 4. The treasurer shall invest the amounts on
2 deposit in the trust with care, prudence, and discretion so as
3 to achieve the objectives of the trust. The treasurer shall
4 give due consideration to rate of return, risk, term or
5 maturity, diversification of the total portfolio within the
6 trust, liquidity, the projected disbursements and
7 expenditures, and the expected payments, deposits,
8 contributions, and gifts to be received. The treasurer may not
9 require the trust to invest directly in obligations of the
10 state or any political subdivision of the state or in any
11 investment or other fund administered by the treasurer. The
12 assets of the trust must be continuously invested and
13 reinvested in a manner consistent with the objectives of the
14 trust until disbursed for qualified educational expenses,
15 expended on expenses incurred by operations of the trust, or
16 refunded to the depositor or designated beneficiary on the
17 conditions provided in the participation agreement.

18 Section 5. The treasurer shall obtain written advice
19 of counsel or written advice from the Securities Exchange
20 Commission to ensure that the trust and the offering of
21 participation in the trust are not subject to federal
22 securities laws.

23 Section 6. Annually, on or before October 15, the
24 treasurer shall submit a financial report to the Governor on
25 the operations of the trust, including the receipts,
26 disbursements, assets, investments, liabilities, and
27 administrative costs of the trust for the previous fiscal
28 year. The treasurer shall also submit such a report to the
29 Florida Affordable College Trust Advisory Committee
30 established in section 11 of this act, and shall make the
31 report available to each depositor and designated beneficiary.

1 Section 7. The property of the trust and the earnings
2 on the trust are exempt from taxation by the state or by any
3 political subdivision of the state.

4 Section 8. The state pledges to depositors, to
5 designated beneficiaries, and to any party who enters into
6 contracts with the trust that the state will not limit or
7 alter the rights vested in the trust or contract with the
8 trust by sections 1 through 10 of this act until all
9 obligations are fully met and discharged and all contracts are
10 fully performed on the part of the trust. The state may limit
11 or alter the trust only if adequate provision is made by law
12 for the protection of depositors and designated beneficiaries
13 under the obligations of the trust and for the protection of
14 parties who entered into contracts with the trust. The trust,
15 on behalf of the state, may include this pledge and
16 undertaking for the state in participation agreements and
17 other obligations or contracts.

18 Section 9. A participation agreement with the trust
19 does not constitute an agreement, pledge, promise, or
20 guarantee of any person's admission to or continued enrollment
21 in an eligible institution in the state or any other
22 postsecondary educational institution. A participation
23 agreement does not guarantee that the amount generated by
24 investment in the trust will be adequate to fully fund the
25 educational expenses for a designated beneficiary at any
26 eligible educational institution.

27 Section 10. The treasurer shall take any action
28 necessary to ensure that the trust complies with all
29 applicable requirements of federal and state laws, rules, and
30 regulations to the extent necessary for the trust to
31 constitute a qualified state tuition program and to ensure

1 that the trust is exempt from taxation under s. 529 of the
2 Internal Revenue Code.

3 Section 11. (1) There is established the Florida
4 Affordable College Trust Advisory Committee. Committee members
5 include:

6 (a) The State Treasurer;

7 (b) The Commissioner of Education;

8 (c) The Chancellor of the Board of Regents;

9 (d) The Executive Director of the State Board of
10 Community Colleges;

11 (e) The Executive Director of the Postsecondary
12 Education Planning Commission;

13 (f) The chairpersons of the committees of the Florida
14 Senate and the House of Representatives having oversight of
15 matters relating to educational finance, revenue, and bonding,
16 or their designees;

17 (g) A student financial aid officer from a public
18 postsecondary educational institution, appointed by the Board
19 of Regents for an initial term of 2 years, to be replaced by
20 such an officer appointed by the State Board of Community
21 Colleges for the following term, which will be for 4 years.
22 Subsequent appointments will be to 4-year terms and will
23 rotate between the two boards;

24 (h) A finance officer at a public postsecondary
25 educational institution appointed by the State Board of
26 Community Colleges for an initial term of 3 years, to be
27 replaced by such an officer appointed by the Board of Regents
28 for the following term, which will be for 4 years. Subsequent
29 appointments will be to 4-year terms and will rotate between
30 the two boards;

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1 (i) A student financial aid officer employed by an
2 independent postsecondary educational institution that is
3 eligible for the Florida Resident Access Grant as provided in
4 section 240.605, Florida Statutes, to be appointed by the
5 Postsecondary Education Planning Commission to an initial term
6 of 2 years, with subsequent appointments to 4-year terms;

7 (j) A finance officer employed by an independent
8 postsecondary educational institution that is eligible for the
9 Florida Resident Access Grant as provided in section 240.605,
10 Florida Statutes, to be appointed by the Postsecondary
11 Education Planning Commission for an initial term of 3 years,
12 with subsequent appointments to 4-year terms;

13 (k) A finance officer employed by a nonpublic
14 postsecondary educational institution that is licensed by the
15 State Board of Nonpublic Career Education or that is under the
16 jurisdiction of the State Board of Independent Colleges and
17 Universities, to be appointed by the Postsecondary Education
18 Planning Commission to an initial 2-year term, with subsequent
19 appointments to 4-year terms;

20 (2) Members of the council shall serve without
21 compensation but may be reimbursed for travel and per diem
22 expenses in accordance with section 112.061, Florida Statutes.

23 (3) The advisory committee shall meet at least
24 annually. The State Treasurer shall convene the meetings of
25 the committee.

26 (4) Within 6 months after the date of the trust's
27 annual report, the State Treasurer and the Commissioner of
28 Education shall jointly submit to the Legislature a report
29 evaluating the Florida Affordable College Trust and making
30 recommendations, if any, for improvements in the program.

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1 Section 12. The Florida Affordable College Trust may
2 establish a direct-support organization that is:

3 (1) A Florida corporation not for profit, which is
4 incorporated under chapter 617, Florida Statutes, and approved
5 by the Secretary of State.

6 (2) Organized and operated exclusively to receive,
7 hold, invest, and administer property and to make expenditures
8 to or for the benefit of the program.

9 (3) An organization that the fund's advisory committee
10 has reviewed and certified to be operating in a manner
11 consistent with the goals of the fund. Unless so certified,
12 the organization may not use the name of the fund.

13 (4) Subject to an annual postaudit by an independent
14 certified public accountant as provided in rules of the fund.
15 The annual audit shall be submitted to the State Board of
16 Administration and Auditor General for review. The State Board
17 of Administration and Auditor General may require and receive
18 from the organization or its independent auditor any detail or
19 supplemental data relative to the operation of the
20 organization.

21 (5) The Treasurer shall serve as director of the
22 direct-support organization and shall name four other persons
23 to serve as directors of the organization. The directors shall
24 serve without compensation but may be reimbursed for travel
25 and per diem expenses in accordance with section 112.061,
26 Florida Statutes.

27 Section 13. Effective July 1, 2000, a qualified
28 beneficiary under the Florida Prepaid College Program pursuant
29 to s. 240.551, Florida Statutes, is eligible to become a
30 designated beneficiary under the Florida Affordable College
31 Trust. During the 1999-2000 school year, the board of

1 directors of the Florida Affordable College Trust shall work
2 with the Florida Prepaid College Board to contact and
3 renegotiate the contracts of all qualified beneficiaries of
4 the Prepaid College Program. On July 1, 2000, all assets under
5 the control of the Prepaid College Board and Program shall be
6 transferred to the Florida Affordable College Trust, with the
7 following options for qualified beneficiaries:

8 (1) A qualified beneficiary who, in May, 2000, is 5 or
9 more years from high school graduation may:

10 (a) Transfer into the Florida Affordable College Trust
11 the full amount paid into the program on his or her behalf,
12 plus interest calculated at a rate that corresponds at least
13 to the prevailing interest rates for savings accounts provided
14 by banks and savings and loan associations; or

15 (b) Receive a refund of the amount paid in and an
16 additional amount equivalent to the amount of interest
17 calculated at a rate that corresponds at least to the
18 prevailing interest rates for savings accounts provided by
19 banks and savings and loan associations.

20 (2) A qualified beneficiary who, in May, 2000, is
21 enrolled in an eligible postsecondary educational institution
22 under the Florida Prepaid College Program, or who is within 5
23 years of graduation from high school, may choose one of the
24 following options:

25 (a) Continue to exercise the complete benefits for
26 which he or she has contracted. By July 1, 2000, the contract
27 must be renegotiated so that the full amount paid on behalf of
28 the designated beneficiary is transferred to the Florida
29 Affordable College Trust for fiscal management. On that date,
30 the trust shall assume legal responsibility for carrying out
31 the functions required of the Florida Prepaid College Board

1 under the original contract, and the state shall retain the
2 responsibility to assure that the contract covers the full
3 costs of tuition and any other benefits guaranteed under the
4 contract.

5 (b) Transfer into the Florida Affordable College Trust
6 the full amount paid into the program on his or her behalf,
7 plus interest. Interest shall be calculated at a rate that
8 corresponds at least to the prevailing interest rates for
9 savings accounts provided by banks and savings and loan
10 associations.

11 (c) Receive a refund of the amount paid on his or her
12 benefit and an additional amount equivalent to the amount of
13 interest calculated at a rate that corresponds at least to the
14 prevailing interest rates for savings accounts provided by
15 banks and savings and loan associations.

16 Section 14. Subsection (1) of section 222.22, Florida
17 Statutes, is amended to read:

18 222.22 Exemption of moneys in the Florida Affordable
19 College Trust, Prepaid Postsecondary Education Expense Trust
20 Fund, and in a Medical Savings Account from legal process.--

21 (1) Moneys paid into or out of the Florida Affordable
22 College Trust or the Florida Prepaid College Trust Fund by or
23 on behalf of a purchaser or designated ~~qualified~~ beneficiary
24 pursuant to a an advance payment contract made under s.
25 240.551 or sections 1 through 10 of this act, which contract
26 has not been terminated, are not liable to attachment,
27 garnishment, or legal process in the state in favor of any
28 creditor of the purchaser or beneficiary of such advance
29 payment contract.

30 Section 15. Section 240.552, Florida Statutes, is
31 amended to read:

1 240.552 Florida Affordable College ~~Prepaid Tuition~~
2 Scholarship Program.--The Florida Affordable College ~~Prepaid~~
3 ~~Tuition~~ Scholarship Program is hereby established with the
4 intent to provide economically disadvantaged youth with
5 ~~prepaid~~ postsecondary ~~tuition~~ scholarships through the Florida
6 Affordable College Trust. The direct-support organization
7 established pursuant to section 12 of this act ~~s. 240.551~~
8 shall administer the program with the assistance and
9 cooperation of the Department of Education to achieve the
10 following objectives:

11 (1) Provide an incentive for economically
12 disadvantaged youth to improve school attendance and academic
13 performance in order to graduate and pursue a postsecondary
14 education.

15 (2) Obtain the commitment and involvement of private
16 sector entities by virtue of funding matches with a ratio of
17 50 percent provided by the private sector and 50 percent
18 provided by the state.

19 (3) Purchase postsecondary ~~prepaid tuition~~
20 scholarships through contract with the Florida Affordable
21 College Trust for students certified by the Department of
22 Education to the direct-support organization who meet minimum
23 economic and school requirements and remain drug free and
24 crime free.

25 (a) For the purpose of this subsection, "drug free"
26 means not being convicted of, or adjudicated delinquent for,
27 any violation of chapter 893 after being designated a
28 recipient of a Florida prepaid tuition scholarship.

29 (b) For the purpose of this subsection, "crime free"
30 means not being convicted of, or adjudicated delinquent for,
31 any felony or first degree misdemeanor as defined in ss.

1 775.08 and 775.081 after being designated a recipient of a
2 Florida Affordable College ~~prepaid tuition~~ Scholarship.

3 Section 16. Paragraph (c) of subsection (2) of section
4 732.402, Florida Statutes, is amended to read:

5 732.402 Exempt property.--

6 (2) Exempt property shall consist of:

7 (c) ~~Florida Prepaid College Program~~ Contracts
8 purchased pursuant to s. 240.551 and sections 1 through 10 of
9 this act.

10 Section 17. Effective July 1, 2000, section 240.551,
11 Florida Statutes, is repealed.

12 Section 18. Except as otherwise provided, this act
13 shall take effect July 1, 1999.

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16 SENATE SUMMARY

17 Creates the Florida Affordable College Trust. Provides
18 the State Treasurer with duties relating to the trust.
19 Authorizes certain rules and procedures. Provides
20 responsibilities relating to investments. Requires
21 counsel. Requires a financial report. Provides for
22 exemption from taxation. Prohibits certain limitations to
23 and alterations of the trust. Precludes agreements with
24 the trust from providing guarantees related to admissions
25 and levels of payment to certain institutions. Creates an
26 advisory committee and provides for the appointment of
27 committee members. Authorizes a direct-support
28 organization. Provides for a board of directors. Provides
29 for the transfer of certain assets and for the
30 renegotiation of contracts under the Florida Prepaid
31 College Program. Exempts property in the Florida
Affordable College Trust from certain claims of
creditors. Transfers responsibilities relating to the
Florida Prepaid Tuition Scholarship Program. Provides
that contracts with the Florida Affordable College Trust
are exempt from certain creditors with respect to
deceased persons. Repeals s. 240.551, F.S., relating to
the Florida Prepaid College Program.